

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DANIEL J. MATTHEWS,

Plaintiff,

No. 2:16-cv-01958-SB

v.

ORDER

J. TAYLOR, Superintendent Eastern
Oregon Correctional Institution, et. al.,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Beckerman issued a Findings and Recommendation [119] on April 24, 2018, in which she recommends that this Court grant the State Defendants' Partial Motion for Summary Judgment for Lack of Exhaustion of Administrative Remedies [40] and Motion for Summary Judgment on the Merits [75]. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiff filed timely objections to the Magistrate Judge's Findings & Recommendation. Pl. Obj., ECF 126. When any party objects to any portion of the Magistrate Judge's Findings &

Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Among other things, Plaintiff objects to the recommendation that this Court dismiss the Doe defendants and to the F&R's failure to address his claims regarding issues with his mail. Pl. Obj. 3, 10–11. Neither the Doe defendants nor the Mailroom Staff have appeared or been served in this case. *See* Waiver of Service, ECF 36 (Defense counsel declining to waive service on behalf of the Doe and Mailroom defendants). Judge Beckerman recommends dismissing the claims against the Doe defendants on the grounds that Plaintiff has failed to serve or identify these defendants and has not sought the Court's assistance in doing so. F&R 27. The F&R does not otherwise address Plaintiff's claims against the mailroom.

However, a review of the record demonstrates that Plaintiff has indicated difficulties in ascertaining these defendants' identities throughout the litigation and appears to have sought assistance from the Court on at least one occasion. Pl. Mot. Ext. Discov., ECF 35; Pl. Resp. Mot. Stay, ECF 44; Pl. Mot Compel, ECF 66. Moreover, because discovery was limited solely to issues pertaining to whether Plaintiff had exhausted his administrative remedies, Plaintiff has had little opportunity to seek this information. *See* Order, ECF 47; Order at 3, ECF 98. In addition, because the mailroom defendants have not appeared or been served in this case, there is no evidence in the record regarding Plaintiff's grievances against the mailroom. Accordingly, the Court declines to dismiss these defendants at this time.

The Court has carefully considered the rest of Plaintiff's objections and concludes there is no other basis to modify the Findings & Recommendation. The Court has also reviewed the

pertinent portions of the record *de novo* and finds no other error in the Magistrate Judge's Findings & Recommendation.

CONCLUSION

The Court ADOPTS in part Magistrate Judge Beckerman's Findings and Recommendation [119]. The claims against the State Defendants are dismissed with prejudice. Because there are outstanding defendants and claims in this case, Court declines to enter judgment on Plaintiff's claims. Plaintiff shall have additional time to discover the identities of and serve the Doe and Mailroom defendants.

IT IS SO ORDERED.

DATED this 17 day of Sept, 2018.


MARCO A. HERNÁNDEZ
United States District Judge